



BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2016-0578; FRL-9970-96]

Calcium Salts of Phosphorous Acid; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for the calcium salts of phosphorous acid. Verdesian Life Sciences, LLC., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA). This regulation eliminates the need to establish a maximum permissible level for residues of calcium salts of phosphorous acid under FFDCA when used in accordance with the terms of the exemption.

DATES: This regulation is effective [*insert date of publication in the Federal Register*].

Objections and requests for hearings must be received on or before [*insert date 60 days after date of publication in the Federal Register*], and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2016-0578, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave., NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703)

305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: BPPDFRNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.

C. How Can I File an Objection or Hearing Request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2016-0578 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before *[insert date 60 days after date of publication in the **Federal Register**]*. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2016-0578, by one of the following methods:

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- *Mail*: OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery*: To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

II. Background

In the **Federal Register** of December 20, 2016 (81 FR 92758) (FRL-9956-04), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 6F8481) by Verdesian Life Sciences, LLC., 1001 Winstead Dr., Suite 480, Cary, NC 27513. The petition requested that 40 CFR 180.1210 be amended to include residues of the systemic fungicide/systemic acquired resistance (SAR) inducer calcium salts of phosphorous acid in or on all food commodities when used as an agricultural fungicide and in or on potatoes when applied as a post-harvest treatment at 35,600 ppm or less phosphorous acid. That document referenced a summary of the petition prepared by the petitioner Verdesian Life Sciences, LLC, which is available in the docket via <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

The exemption being established in this action varies slightly from what the petitioner requested, for the reasons described in Unit III.C. below.

III. Final Rule

A. EPA's Safety Determination

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the

pesticide chemical residue in establishing a tolerance or tolerance exemption and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue” Additionally, FFDCa section 408(b)(2)(D) requires that EPA consider “available information concerning the cumulative effects of [a particular pesticide’s] . . . residues and other substances that have a common mechanism of toxicity.” FFDCa section 408(b)(2)(C) provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

EPA evaluated the available toxicity and exposure data on calcium salts of phosphorous acid and considered their validity, completeness, and reliability, as well as the relationship of this information to human risk.

Because of the structural and functional similarity of calcium salts of phosphorous acid with potassium salts of phosphorous acid, Fosetyl-Al, and phosphonic acid, EPA was able to rely on toxicity data for those compounds to assess the toxicity potential of calcium salts of phosphorous acid. The resulting assessment indicates that calcium salts of phosphorous acid would not be considered acutely toxic nor present other concerns for subchronic or chronic toxicity, developmental toxicity, or mutagenicity. As such the Agency has not identified any endpoints of concern for calcium salts and has conducted a qualitative assessment of exposure. The Agency has determined that there is a potential for dietary exposure to residues of calcium

salts of phosphorous acid in or on food from use as a pesticidal substance; exposures in drinking water are not expected due to the dissolution of calcium salts of phosphorous acid in water, and non-occupational exposures are not expected since calcium salts of phosphorous acid are not intended for residential use. A full explanation of the data upon which EPA relied and its risk assessment based on those data can be found within the November 8, 2017, document entitled “Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for Calcium Salts of Phosphorous Acid.” This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**.

Based upon its evaluation, EPA concludes that calcium salts of phosphorous acid are not toxic. Although there may be some exposure to residues in or on food when calcium salts of phosphorous acid are used as an agricultural fungicide or a systemic acquired resistance inducer, there is a lack of concern due to the lack of potential for adverse effects. EPA also determined that retention of the Food Quality Protection Act (FQPA) safety factor was not necessary due to the lack of threshold effects.

Therefore, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of calcium salts of phosphorous acid. Therefore, EPA is establishing an exemption from the requirement of a tolerance for residues of calcium salts of phosphorous acid.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes due to the lack of concern about safety for calcium salts of phosphorous acid at any exposure level.

C. Revisions to Petitioned-for Tolerances

EPA is establishing an exemption that varies slightly from what the petitioner requested. Because the petitioner requested the systemic acquired resistance inducer use specifically for

calcium salts, which has not been assessed for the other salts of phosphorous acid, EPA is promulgating this exemption as a separate paragraph in the section for exemptions for residues of phosphorous acid and its salts. Moreover, the Agency is not including any specific reference for the post-harvest use on potatoes as requested for two reasons. First, unless otherwise specified, tolerances cover both pre-harvest and post-harvest applications. Second, because the original numerical limitation is written in terms of an amount of phosphorous acid that may be used, this limitation has no effect for an exemption based only on the related calcium salts of phosphorous acid, which have been considered as a distinct fungicide, although it is related to all the other salts of phosphorous acid. In any case, residues of calcium salts of phosphorous acid are considered to be covered for all post-harvest uses without numerical limitation, including those on potatoes.

IV. Statutory and Executive Order Reviews

This action establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to EPA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled “Regulatory Planning and Review” (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997); nor is it considered a regulatory action under Executive Order 13771, entitled “Reducing Regulations and Controlling Regulatory Costs” (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order

12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this action, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, EPA has determined that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require EPA’s consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 5, 2018.

Richard P. Keigwin, Jr.,
Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180--[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. Revise § 180.1210 to read as follows:

§ 180.1210 Phosphorous acid; exemption from the requirement of a tolerance.

(a) An exemption from the requirement of a tolerance is established for residues of phosphorous acid and its ammonium, sodium and potassium salts in or on all food commodities when used as an agricultural fungicide and in or on potatoes when applied as a post-harvest treatment at 35,600 ppm or less phosphorous acid.

(b) An exemption from the requirement of a tolerance is established for residues of calcium salts of phosphorous acid, including its metabolites and degradates, in or on all food commodities when used as a fungicide or as a systemic acquired resistance (SAR) inducer.

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